

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/30/08

REPUBLIC OF BENIN,

Plaintiff,

- against -

BEVERLY MEZEI, et al.,

Defendants.

06 Civ. 870 (JGK)

MEMORANDUM OPINION
AND ORDER

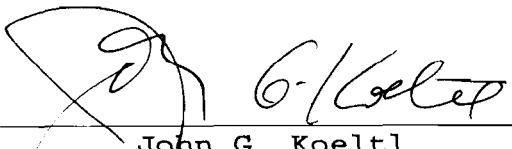
JOHN G. KOELTL, District Judge:

Defendants Mezei, Shimoff and Koller move pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss those portions of the Second Amended Complaint that seek relief under the Foreign Missions Act, 22 U.S.C. §§4301-4316 (the "FMA"). The plaintiff correctly responds that it has asserted only four claims for relief and each is alleged under state law and not under the FMA. While the FMA is referred to in the Complaint, it appears to be used primarily for evidentiary detail to support the plaintiff's allegation that it never authorized the sale in question and is not the basis for relief. While the FMA is referred to as a basis for subject matter jurisdiction, it is clear that jurisdiction is also based on diversity of citizenship jurisdiction, and therefore the reference to the FMA for jurisdiction is surplusage.

Because no claim for relief is based on the FMA, the motion to dismiss those claims based on the FMA is **denied** without prejudice as moot. The Clerk is directed to close Docket No. 49.

SO ORDERED.

Dated: New York, New York
June 30, 2008



John G. Koeltl
United States District Judge